

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Arbros Communications, Inc.)	
)	File No. EB-02-TC-038
)	
Apparent Liability for Forfeiture)	NAL/Acct. No. 200332170001
)	
)	FRN: 0003793205
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 4, 2003

Released: March 6, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”),¹ we find that Arbros Communications, Inc. (“Arbros”)² apparently willfully or repeatedly violated section 214(a) of the Communications Act of 1934, as amended (the “Act”),³ and sections 63.61, 63.71, and 63.505 of the

¹ See 47 U.S.C. § 503(b)(4)(A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has “willfully or repeatedly” failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. The section provides that the Commission must assess such penalties through the use of a written notice of apparent liability or notice of opportunity for hearing.

² Arbros is a Delaware Corporation. It appears that it is held by Arcomm Holding Company (Arcomm). A majority of Arcomm’s shares are owned by Linsang Partners, LLC. Arbros has the following affiliates: Arbros Communications Licensing Company West, LLC; Arbros Communications Licensing Company Canada, LLC; Arbros Communications N.E. LLC and its wholly owned subsidiaries Arbros Communications Licensing Company, Nutel Communications, Inc. d/b/a Arbros Communications Licensing Company, N.E., and Arbros Communications Licensing Company, Virginia; Arbros Communications S.E., LLC and its wholly owned subsidiary Arbros Communications Licensing Company, S.E. LLC; Arbros Communications Central, LLC and its wholly owned subsidiary Arbros Communications Company Central LLC; Arbros Communications Texas LLC and its wholly owned subsidiary Arbros Communications Licensing Company Texas, LLC; Arbros Communications California, LLC and its wholly owned subsidiary Arbros Communications Licensing Company California LLC; and Comm South Companies, Inc. and its wholly owned subsidiaries Georgia Comm South, Inc., E-Z Tel, Inc., and Comm South Companies of Virginia, Inc. Its main office is 880 Eldridge Landing Road, Linthicum, MD 21090. Its President is John Balestrieri. Arbros has blanket operating authority from the Commission under sections 63.01 and 63.02 of the Commission’s rules, 47 C.F.R. §§ 63.01, 63.02.

³ 47 U.S.C. § 214(a). This section provides in pertinent part that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless there shall first have been obtained from the Commission a

(continued....)

Commission's rules⁴ by discontinuing its domestic interstate access service in California, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Virginia, and Washington, D.C. as well as all of its interstate long distance service, before receiving authorization to do so from the Commission. As a result, Arbros's former customers apparently were without service for up to seven weeks, causing significant disruption to their businesses. Upon our review of the facts and circumstances surrounding these apparent violations, we find that Arbros is apparently liable for a forfeiture in the amount of \$5000 for each of ten discontinuance violations, for a total of \$50,000.

II. BACKGROUND

2. Arbros is a non-dominant provider of resold local exchange, resold exchange access, resold long distance, private line, and data services in twelve states. According to Arbros, late in 2001, it determined that continued provision of resold service would not be in its best interest. Accordingly, in October 2001, it decided to lay off about 80 percent of its employees. Subsequently, it informally told the carriers whose services it had resold ("upstream providers") of its plans to exit the business.⁵ After being contacted by the staff of the Common Carrier Bureau ("CCB"), on March 1, Arbros filed an application for discontinuance with the Commission, stating that between February 12 and February 14, 2002, Arbros sent notices to the affected customers stating that service would be discontinued on March 4, 2002. The notice to Arbros's customers stated that the FCC will normally authorize the proposed discontinuance of service unless it is shown that the customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise affected. Arbros's application for discontinuance, however, was filed too late to expect Commission action by the March 4 date given in the customer notice, since the Commission's rules provide that the authorization would (in the absence of action to the contrary) be automatically granted only after a 31-day period. In response to complaints from consumers who received the notice and stated that Arbros could not be reached on the telephone number set forth in the notice, Arbros filed a supplemental application with a revised notice that was also sent to its customers, stating that Arbros planned to disconnect service on March 16, 2002, and that Arbros would request waiver of the 31-day requirement.⁶ In fact, interstate exchange access and long distance service to some customers was cut off without Commission authorization during the third week of March 2002.⁷ Arbros asserts that this service termination was not its fault, but was caused by its upstream providers cutting off service to Arbros on February 27, 2002 and March 18, 2002. Arbros has not determined whether it will declare bankruptcy, although it states that it does have liquidity problems and billing disputes, and has attempted to resolve issues with creditors as they arise.⁸

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certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service...."

⁴ 47 C.F.R. §§ 63.61, 63.71, 63.505.

⁵ Letter dated September 5, 2002, from E. Ashton Johnston, counsel for Arbros, to Peter G. Wolfe, FCC ("Arbros Letter").

⁶ Public Notice, "Comments Invited on Arbros Communications, Inc. and its Subsidiaries Joint Application to Discontinue Domestic Telecommunications Services," DA 02-571 (Mar. 7, 2002).

⁷ Declaration of Karl Fischer on behalf of Traffic Planning & Design (Sept. 4, 2002) ("Fischer Declaration"); Declaration of Charles Tassin on behalf of Career Transition Center (Aug. 29, 2002) ("Tassin Declaration"); Declaration of Jim Smith on behalf of Conard-Pyles Company (August 28, 2002) ("Smith Declaration").

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3. Our staff sent a letter of inquiry to Arbros on April 5, 2002 inquiring, among other things, about the number of customers whose service was discontinued or reduced, whether they received service from other providers, and the circumstances of the discontinuances. Arbros filed a response on May 13, 2002, requesting confidential treatment for the entire response. In reply to a telephonic request by our staff, Arbros filed a letter on September 5 identifying those portions of the May 13 response for which it was requesting confidentiality.⁹

4. In its response, Arbros claimed that there was no discontinuance by Arbros. First, it stated that it believes that none of its customers stopped receiving service because its customers had already changed service providers. In support of this belief, Arbros noted (1) that it informed its upstream providers of the identity of its customers with the understanding that these providers would be contacting customers regarding migration and (2) it worked with customers to obtain other service providers and advised all customers with current bills that Arbros would continue to provide their service until cutovers were completed.¹⁰ Second, Arbros stated that any discontinuance that occurred resulted from the actions of its upstream providers in terminating service.¹¹

5. Arbros' upstream providers claimed that only 40 of the 306 Arbros customers migrated to their systems.¹² Moreover, several former Arbros customers have furnished declarations stating that they were discontinued by Arbros and lost service for varying periods of time.¹³ For example, Royall & Company lost service for four weeks and Conard-Pyles Company lost service for seven weeks.¹⁴ In several instances, declarants claimed that Arbros gave them incorrect information or could not be reached to arrange for migration to another service.¹⁵ Declarants claimed that their companies were damaged due to the discontinuance by loss of clients, reduction in cash flow, increase in administrative costs and support time, lack of communications with the company's branch office, and the need to travel to branch offices or hire couriers to communicate with branch offices.¹⁶ Further, one of the upstream providers claims that (1) it never terminated service to Arbros, (2) Arbros never paid its last invoice after notifying the upstream provider that it would no longer supply long distance service, and (3) the upstream provider generally offers only wholesale service, but accommodated Arbros' customers to avoid elimination of service to those customers who wished to migrate to it.¹⁷

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⁸ Arbros Letter.

⁹ Because we only rely on the non-confidential material in Arbros's response, we do not rule on Arbros's request for confidentiality.

¹⁰ Arbros Letter.

¹¹ *Id.*

¹² Letters from upstream providers to Peter G. Wolfe, FCC (Aug. 7 and 20, 2002) ("Upstream Provider Letters").

¹³ Declaration of Don Schindhelm on behalf of Applied Information Technologies (Sept. 4, 2002)(Schindhelm Declaration); Fischer Declaration; Tassin Declaration; Declaration of Rob Edwards on behalf of Royall & Company (Aug. 27, 2002)(Edwards Declaration); Smith Declaration.

¹⁴ Edwards Declaration; Smith Declaration.

¹⁵ Schindhelm Declaration; Fischer Declaration; Tassin Declaration; Smith Declaration.

¹⁶ Schindhelm Declaration; Fischer Declaration; Tassin Declaration; Smith Declaration.

¹⁷ Letter from upstream provider to Peter G. Wolfe (Aug. 20, 2002).

II. DISCUSSION

A. Apparent Violations Evidenced in the Record

6. As explained below, Arbros's business practices evidence apparent willful or repeated violations of section 214(a) of the Act and sections 63.61, 63.71, and 63.505 of the Commission's rules.

7. Arbros's application for discontinuance authorization and its response to our staff's inquiries establish that Arbros did not meet its obligations as a common carrier to adequately notify its customers of the discontinuance or obtain Commission approval before it discontinued service, in apparent violation of section 214(a) of the Act and sections 63.61, 63.71, and 63.505 of the Commission's rules. Section 214(a) has an essential role in the Commission's efforts to protect consumers. Unless the Commission has the ability to determine whether a discontinuance of service is in the public interest, it cannot protect customers from having essential services cut off without adequate warning, or ensure that these customers have other viable alternatives.¹⁸ It appears that Arbros's customers were left without service for periods of up to seven weeks.¹⁹ Apparently, less than 15 percent of them migrated to the systems of Arbros's upstream providers.²⁰ Moreover, Arbros's customers claim to have suffered damage due to the discontinuance by loss of clients, reduction in cash flow, increase in administrative costs and support time, lack of communications, with their branch offices, and the need to travel to branch offices or hire couriers to communicate with branch offices.²¹ Such problems underscore the need to strictly enforce section 214 and our rules regarding notice and prior authorization of discontinuances here.

8. Under the Act and our rules, it is clear that a telecommunications carrier must receive Commission authorization and provide the required notice to its customers before it may discontinue interstate service to those customers.²² Here, however, Arbros apparently claims that a timely request for authorization and the required notice to its customers was not possible because its upstream providers abruptly terminated service to Arbros and thereby caused the discontinuance of service to Arbros's end-user customers.²³ We find that the record does not support Arbros's claim. The company states that it decided in the fall of 2001, months before the actual discontinuances, that it would cease providing resale service.²⁴ Therefore, Arbros had ample time after its decision to leave the market to file an application for discontinuance and provide notice to its customers. Arbros claims that it was not at fault for the unauthorized discontinuance because its suppliers cut off service. The record shows, however, that the suppliers who cut off service did so because Arbros failed to pay its bills. Thus, it appears that Arbros ultimately was at fault for the service cut-off. To the extent that Arbros may have disputed the amounts owed to its suppliers, there is no evidence in the record that Arbros ever attempted to pay its providers any disputed amounts, subject to later determination, to permit it to avoid premature discontinuance. Moreover, Arbros's claim that it discontinued only because its suppliers cut off service has been

¹⁸ See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 and Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11380-81 (1999).

¹⁹ Edwards Declaration; Smith Declaration.

²⁰ Upstream provider letters.

²¹ Schindhelm Declaration; Fischer Declaration; Tassin Declaration; Smith Declaration.

²² 47 U.S.C. § 214(a); 47 C.F.R. §§ 63.61, 63.71, 63.505.

²³ Arbros Letter.

²⁴ *Id.*

contradicted.²⁵ We conclude that Arbros, not its upstream providers, was apparently responsible for the unauthorized discontinuance here.

9. In attempting to excuse its lapses, Arbros also relies on the contention that some customers were able to avoid the loss of service by obtaining service from other carriers, including Arbros's upstream providers. While the issue of whether customers would be able to receive substitute service from another provider is relevant to the Commission's review of an application for discontinuance,²⁶ the ability of customers to receive substitute service is not a defense when a carrier has discontinued service without authorization. In any event, the record establishes that Arbros's actions to migrate these customers to other carriers were ineffective. Only 40 of Arbros's 306 customers were switched to its upstream providers, and several of the customers providing declarations have stated that Arbros was impossible to reach or gave the customer incorrect information, and that they were without service for up to seven weeks.²⁷ In view of the foregoing facts, it appears that Arbros willfully or repeatedly discontinued service without Commission authorization in violation of section 214(a) of the Act and sections 63.61, 63.71, and 63.505 of the Commission's rules.

B. Forfeiture Amount

10. The forfeiture guidelines establish a base forfeiture amount of \$5000 per violation for unauthorized discontinuance of service to a community.²⁸ Arbros discontinued exchange access service in nine states and all of its interstate long distance service. As we have done previously in this context, we will treat Arbros's discontinuance of exchange access service in each state as discontinuance to a community, and we will treat its discontinuance of interstate long distance service as an additional discontinuance of service to a community.²⁹ Because there were ten violations, *i.e.*, unauthorized discontinuances of long distance service and of exchange access service in these nine communities, this results in a total proposed forfeiture of \$50,000.

III. CONCLUSION AND ORDERING CLAUSES

11. We have determined that Arbros apparently committed ten separate violations of section 214(a) of the Communications Act and sections 63.61, 63.71, and 63.505 of the Commission's rules by discontinuing service without Commission authorization, as described above. We have further determined that Arbros is apparently liable in the amount of \$5000 for each of the violations of section 214 of the Act and sections 63.61, 63.71, and 63.505 of the Commission's rules.

12. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, and authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§0.111, 0.311, that Arbros Communications, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the

²⁵ Letter from Upstream Provider to Peter G. Wolfe (Aug. 20, 2002).

²⁶ See 47 C.F.R. §63.71(a)(5).

²⁷ Upstream Provider Letters; Schindhelm Declaration; Fischer Declaration; Tassin Declaration; Smith Declaration.

²⁸ 47 C.F.R. § 1.80.

²⁹ See *BroadStreet Communications, Inc.*, 17 FCC Rcd at 7938, 1739 (EB, 2002).

amount of \$50,000 for willful or repeated violations of section 214(a) of the Act³⁰ and sections 63.61, 63.71, and 63.505 as described in the paragraphs above.³¹

13. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice of Apparent Liability, Arbros Communications, Inc. SHALL PAY the full amount of the proposed forfeiture³² OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³³

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Telecommunications Consumers Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

³⁰ 47 U.S.C. § 214(a).

³¹ 47 C.F.R. §§ 63.61, 63.71, 63.505.

³² The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on Arbros Communications, Inc.'s check or money order to "NAL/Acct. No. 200332170001." Such remittances must be mailed to Forfeiture Collection section, Finance Branch, federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

³³ 47 C.F.R. § 1.1914.

17. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to E. Ashton Johnston, Esq., Piper Rudnick, 1200 Nineteenth Street, N.W., Washington, D.C. 20036-2412; and to John Balestrieri, President, Arbros Communications, Inc., 880 Eldridge Landing Road, Linthicum, MD 21090.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

ATTACHMENT A

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	
	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<i>Mass Media Services</i>	
Television Services	
	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	
	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	
	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	

220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less

Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	
24 GHz – Incumbent Licensees	\$12.5 Million in Annual Receipts or Less 1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

